

Qualifications for Arbitrators of the MTC Sponsored ADR Process Involving Multistate Tax Disputes

A person (the “candidate”) seeking to be included on the Executive Director’s list of approved arbitrators for multistate tax disputes under the sponsorship of the Multistate Tax Commission (see Bylaw 14 of the Multistate Tax Commission) must meet the following requirements:

I. Integrity of Arbitration Process:

The Executive Director may impose requirements, beyond those specifically stated here, to ensure the integrity of the specific ADR matter, including, without limitation, the absence of any appearance of a conflict of interest in the ADR matter being submitted. For purposes of this provision, current employees or officials of:

- (A) state or local tax agencies, including members of a Board or Commission that supervises a state or local tax agency;
- (B) associations of state or local tax agencies;
- (C) multistate taxpayers, other than professional groups that represent specific taxpayers in tax cases; and
- (D) associations of multistate taxpayers,

are not eligible to be certified as arbitrators.

This limitation does not apply to a person otherwise disqualified whose work responsibilities in the disqualifying position include serving as an arbitrator.

II. Education, Knowledge and Experience in State Taxation of Interstate and Foreign Commerce:

The candidate must demonstrate satisfaction of (A) and (B) or, alternatively, (C), if the Executive Director of the Multistate Tax Commission has made (C) available:

- (A) He or she has graduated from a four-year, accredited college or university with a Bachelor’s Degree or higher.
- (B) Within the last six (6) years, he or she has at least three (3) years of experience in dealing with a variety of substantive issues involving state taxation (that includes local taxation) of interstate and foreign commerce. Experience meeting this standard includes:

- (i) being the head or chief deputy of any state or local tax agency, including members of a Board or Commission that supervises a state or local tax agency, charged with administering an income, franchise, gross receipts, sales and use, or capital stock tax, or any other state or local tax having a multistate impact;
 - (ii) working for a state or local tax agency, or other governmental agency, where a significant part of the candidate's work responsibility (more than 20% of the candidate's work) for the three (3) year period was on state tax issues arising in the context of interstate or foreign commerce;
 - (iii) working for a professional group that represents specific taxpayers in cases where a significant part of the candidate's work responsibility (more than 20% of the candidate's work) for the three (3) year period was on state tax issues arising in the context of interstate or foreign commerce;
 - (iv) working individually for or in the representation of taxpayers where a significant part of the candidate's work responsibility (more than 20% of the candidate's work) for the three (3) year period was on state tax issues arising in the context of interstate or foreign commerce;
 - (v) working for an association of state tax agencies or of multistate taxpayers where a significant part of the candidate's work responsibility (more than 20% of the candidate's work) for the three (3) year period was on state tax issues arising in the context of interstate or foreign commerce;
 - (vi) being the member of the faculty (full or part-time) of an accredited university or college where a significant academic pursuit of the candidate, as evidenced by courses taught and/or writings produced, for the three (3) year period pertained to state tax issues arising in the context of interstate or foreign commerce; or
 - (vii) any combination of the foregoing that meets the three (3) year period on an aggregate basis.
- (C) Alternatively, a candidate may establish his or her qualifications pertaining to education, knowledge and experience by a written examination, if an examination has been established by the Executive Director. (In adopting this possible alternative, the Executive Committee does not contemplate the availability of an examination alternative until the MTC sponsored ADR process is well established and its use by state tax agencies and taxpayers has reached a level where expenditure of resources to develop an appropriate examination is justified, as determined by the Executive Director of the Commission in his or her absolute discretion.)

III. Training in the ADR Processes:

The candidate must also demonstrate satisfaction of (A) or (B):

- (A) Within the last ten (10) years, the candidate has at least five (5) years of experience in arbitrating disputes (Experience meeting this standard includes:
 - (i) being a full-time judge, arbitrator, or other judicial officer charged with the responsibility for resolving disputes based upon evidence presented for at least two and one-half years;¹
 - (ii) working on less than a full-time basis as an arbitrator, judge, or other judicial officer charged with the responsibility for resolving disputes where the candidate performed these duties as a significant part of his or her work responsibility (more than 20% of the candidate's work) for the five (5) year period; or
 - (iii) being the head or chief deputy of any state or local tax agency, including those who are members of a Board or Commission that supervises a state or local tax agency or the executive director of an association of state tax agencies, that is charged with administering an income, franchise, gross receipts, sales and use, or capital stock tax, or any other state or local tax having a multistate impact for the three (3) year period.
- (B) Within the last six (6) years, he or she has at least three (3) years experience as a professional representing state tax agencies, including representation of an association of state tax agencies, or taxpayers, where the preparation of expository writing on state tax issues arising in the context of interstate or foreign commerce was a significant part of the work of the professional (more than 20% of the candidate's work). The Executive Director may require candidates seeking to satisfy this requirement to submit examples of their writings, suitably redacted to preserve anonymity in non-public documents.

IV. Other Criteria of Qualification:

¹Two and one-half years is specified, rather than the five (5) years specified for the other experiences, in recognition of the full-time status of the candidate in the positions noted.

The candidate must also demonstrate satisfaction of (A), (B), and (C):

- (A) The candidate is of good moral character and sound mind, having never been finally convicted of a felony or a crime involving moral turpitude and not suffering from a mental defect or other psychological condition that would render him or her disabled from being able to perform the duties of an arbitrator.
- (B) There is no evidence that suggests that the candidate lacks the temperament to arbitrate disputes between antagonistic parties.
- (C) A candidate qualified as a mediator is not qualified as an arbitrator without meeting the established minimum qualifications of arbitrators.